

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:	ADMINISTRATIVE ORDER
<b>Jim Scallon</b> Bulter County, Iowa	NO. 2011-SW- <b>32</b>

TO: Jim Scallon  
PO Box 1  
Austinville, Iowa 50608

**I. SUMMARY**

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements:**

David Miller, Field Office 2  
Iowa Department of Natural Resources  
2300 15<sup>th</sup> Street SW  
Mason City, Iowa 50401  
Ph: 641-424-4073

**Relating to legal requirements:**

Kelli Book  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Ph: 515-281-8563

**Appeal, if any, to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, IA 50319-0034

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, IA 50319-0034

**II. JURISDICTION**

This administrative consent order is issued pursuant to Iowa Code section 455B.307(2) which authorizes the DNR to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and chapter 567 Iowa Administrative Code (IAC) 10, which authorize the Department to assess administrative penalties.

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**III. STATEMENT OF FACTS**

1. On September 8, 2010, Michelle Johnson, DNR Field Office 2 environmental specialist, visited Mr. Scallon's properties located at 10935 320<sup>th</sup> Street, Ackley and 11352 320<sup>th</sup> Street, Ackley. During Ms. Johnson's visit to the properties she observed improper disposal of solid waste including appliances, carpeting, furniture, and sheet rock. The appliances had not been properly demanufactured. During the visit, Ms. Johnson spoke to Mr. Scallon, who at the time refused to identify himself. Ms. Johnson later confirmed with the county assessor's office that Mr. Scallon owned both properties.
2. On September 14, 2010, the DNR issued a Notice of Violation letter to Mr. Scallon for improper disposal of solid waste observed by Ms. Johnson on September 8, 2010. The letter explained the solid waste disposal requirements and required that the solid waste be properly disposed of and the receipts submitted to DNR Field Office 2 no later than November 1, 2010.
3. On November 12, 2010, Ms. Johnson returned to Mr. Scallon's properties to determine if the solid waste had been removed from the properties. She noted that some of the solid waste had been removed from the 10935 320<sup>th</sup> Street property, but that a significant amount of solid waste remained and that the solid waste remained at the 11352 320<sup>th</sup> Street property.
4. On November 18, 2010, the DNR sent a follow-up letter to Mr. Scallon advising him that no change had been observed at the properties and extending the compliance deadline to December 15, 2010.
5. On March 4, 2011, Ms. Johnson visited Mr. Scallon's properties to verify that the solid waste had been properly disposed of. She noted that the properties remained as they had been on November 12, 2010 and that no disposal had occurred.
6. On March 8, 2011, the DNR sent a follow-up letter to Mr. Scallon advising that no change had been observed at the properties. The deadline to remove the solid waste was extended until June 1, 2011. This letter included photographs of the solid waste that must be removed.
7. On July 11, 2011, Ms. Johnson returned to Mr. Scallon's properties to determine if the solid waste had been removed. She noted that there had been no change in the removal of the solid waste.
8. On July 18, 2011, DNR sent Mr. Scallon a letter informing him that the solid waste disposal violations and his failure to properly dispose of the solid waste after three requests were being referred for further enforcement.

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**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.304 provides that the Environmental Protection Commission (Commission) shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-124.

2. Iowa Code section 455B.307(1) and 567 IAC 100.4 prohibit dumping or depositing, or permitting dumping or depositing, of any solid waste at any place other than a facility permitted by the DNR, unless otherwise provided by rule. Ms. Johnson observed that solid waste, including, but not limited to furniture, appliances, carpeting, and sheet rock, had been improperly disposed on Mr. Scallon's property. The above facts disclose violations of these provisions.

**V. ORDER**

THEREFORE, DNR orders Mr. Scallon to do the following:

1. Immediately remove and properly dispose of all solid waste from properties located at 10935 320<sup>th</sup> Street, and 11352 320<sup>th</sup> Street, Ackley, Iowa;
2. Submit landfill receipts to the DNR Field Office 2 verifying the proper disposal of all solid waste removed from the properties within 10 days of the disposal; and
3. Pay a penalty of \$3,000.00 within 60 days of receipt of this Order subject to appeal rights stated in Section VII.

**VI. PENALTY**

Iowa Code section 455B.307(3) authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the solid waste disposal violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties at 567 IAC chapter 10. Pursuant to this chapter, the DNR has determined that the most effective and efficient means of addressing the above-cited violation is the issuance of an Order with a \$3,000.00 penalty. The administrative penalty assessed by this Order is determined as follows:

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Economic Benefit. 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper solid waste disposal regulation has allowed Mr. Scallon to save time and money. Mr. Scallon has been able to avoid disposal fees since at least November 2010, when he was first required to have the solid waste removed from the property. It is likely that the solid waste had been deposited on the property for some time prior to its discovery by the DNR. Mr. Scallon has avoided the landfill fees and it is estimated that his economic benefit is at least \$200.00 and that amount is assessed for this factor.

Gravity of the Violation. One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. There are appliances disposed on the property which have not been properly de-manufactured. The appliances are not stored properly, which may have caused hazardous components such as PCBs, mercury, and refrigerant to leak to the soil. These violations threaten the integrity of the regulatory program because compliance with the solid waste regulations is required of all persons in this state. Additionally, the DNR has expended a large amount of resources in attempting to work with Mr. Scallon to properly remove the solid waste from him properties. For these reasons, \$1,500.00 is assessed for this factor.

Culpability. Mr. Scallon has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The solid waste disposal regulations have been in place for more than 20 years. DNR provided Mr. Scallon with at least three extensions to remove the solid waste and Mr. Scallon made little effort to properly dispose of the solid waste. Based on the above considerations, \$1,300.00 is assessed for this factor.

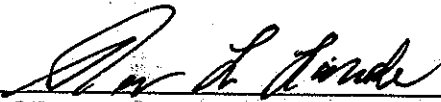
## VII. APPEAL RIGHTS

Pursuant to Iowa Code section 455B.308, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

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**VIII. NONCOMPLIANCE**

Compliance with Section V of this Order constitutes full satisfaction of all requirements pertaining to the violations described in this Order. Failure to comply with this Order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.307.

  
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ROGER L. LANDE, DIRECTOR  
Iowa Department of Natural Resources

Dated this 21st day of  
December, 2011.

Kelli Book; DNR Field Office 2; VI.C